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CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA	
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WRITTEN DECISION - NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re:	)	CASE NO. 04-07260-H7
	)	
RUSSELL W. MILLARD and	)	ADVERSARY CASE 04-90497-H7
ROBBIE LYNN MILLARD,	)	
	)	
Debtors.	)	MEMORANDUM DENYING
	)	DEFENDANT'S REQUEST TO
	)	FILE SUPPLEMENTAL
RALPH SHAPE, TRUSTEE OF THE	)	DECLARATIONS AND
JEAN E. BARBER FAMILY REVOCABLE	)	MEMORANDUM OF
TRUST,	)	CONTENTIONS OF FACT
	)	AND LAW
Plaintiff,	)	
	)	
v.	)	
	)	
RUSSELL W. MILLARD,	)	
	)	
Defendant.	)	

Complaint to Determine Dischargeability under § 523(a)(2),  
(a)(4) and (a)(6) of Title 11 of the United States Bankruptcy  
Code was filed on November 16, 2004.

The first pretrial status conference was held on June 3,  
2005, at which time the Court continued the status conference  
to December 16, 2005, and set a discovery cut-off date of  
November 21, 2005.

The December 2005 status conference was continued by

1 stipulation to February 3, 2006, at which time this Court set the  
2 matter for trial on May 16, 17 and 18, 2006, and ordered that all  
3 declarations in lieu of direct testimony be filed by April 21,  
4 2006, and that each side file its points and authorities by  
5 May 5, 2006, with any replies due by May 12, 2006.

6 This Court continued the trial dates to June 27, 28 and 29,  
7 2006, and then at the request of the parties, who were pursuing  
8 settlement discussions and/or mediation, continued the trial  
9 dates to September 26, 27 and 28, 2006.

10 In the instant motion, Defendant contends that each of the  
11 parties takes a different position as to which party has the  
12 burden of proof under 11 U.S.C. § 523(a)(4). Defendant now seeks  
13 leave to file a supplement to his declarations and his points and  
14 authorities.

15 Real party in interest, Jean Barber, who is confined to an  
16 assistant living facility, opposes, arguing that the additional  
17 declarations will increase the cost of litigation.

18 The complaint was filed in November 2004. Defendant had  
19 just about one year to conduct all of its discovery. The Court  
20 set the matter originally for trial on May 18, 2006, and issued  
21 its written Order Regulating Pretrial Proceedings and Fixing Date  
22 for Trial on February 6, 2006. Defendant agreed to all the terms  
23 of this Court's order at the February 3, 2006, status conference.

24 In summary, Defendant has had more than ample time to  
25 research the pertinent applicable law and to prepare his case for  
26 trial. Accordingly, Defendant's Emergency Motion is denied.

27  
28 Dated: July 28, 2006

  
JOHN J. HARGROVE  
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
325 West F Street, San Diego, California 92101-6991**

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In re: Bankruptcy Case No. 04-07260-H7  
Adversary Case No. 04-90497-H7

**CERTIFICATE OF MAILING**

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

**MEMORANDUM DENYING DEFENDANT'S REQUEST TO FILE SUPPLEMENTAL  
DECLARATIONS AND MEMORANDUM OF CONTENTIONS OF FACT AND LAW**

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed to each of the parties at their respective addresses listed below:

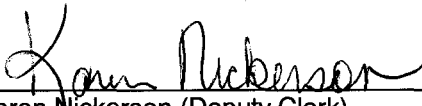
**Attorney(s) for Defendant:**

**R. Craig Zafis, Esq.  
R. CRAIG ZAFIS, APC  
8910 University Center Lane, Suite 550  
San Diego, CA 92122**

**Attorney(s) for Plaintiff:**

**Jerry D. Cluff, Esq.  
Timothy J. Galvin, Esq.  
THE LAW OFFICES OF JERRY D. CLUFF  
1951 Cable Street  
San Diego, CA 92167-0479**

Said envelope(s) containing such document was deposited by me in a regular United States Mail Box in the City of San Diego, in said District on July 28, 2006.

  
\_\_\_\_\_  
Karen Nickerson (Deputy Clerk)  
Judicial Assistant to the Honorable John J. Hargrove